

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

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JAMES F. KIERPIEC,,

Plaintiff,

v.

Case No. 2:06-CV-309

PATRICIA L. CARUSO,

HON. GORDON J. QUIST

Defendant.

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**ORDER ADOPTING REPORT AND RECOMMENDATION**

The Court has before it Plaintiff's Objection to the report and recommendation dated February 8, 2008. In his report and recommendation, Magistrate Judge Greeley recommended that the Court treat Defendant's motion to dismiss as a motion for summary judgment and grant the motion. In particular, the magistrate judge concluded that Plaintiff's denial of access to the courts claim fails because Plaintiff fails to show an actual injury. That is, he has not shown that he is being prevented from pursuing a nonfrivolous lawsuit. The magistrate judge further noted that Plaintiff has not shown that having to receive legal materials by kite while in protective custody has interfered with Plaintiff's ability to access the courts. Regarding Plaintiff's equal protection claim, the magistrate judge concluded that Plaintiff is not a member of a suspect class and Plaintiff failed to show that his status as a protective custody prisoner has any relationship to the denial of his request for a legal writer. Finally, the magistrate judge concluded that Plaintiff failed to support his due process claim

After conducting a *de novo* review of the report and recommendation, the Court concludes that the report and recommendation should be adopted.

In his Objection, Plaintiff again says that he is being denied his right of access to the courts because he is not allowed assistance from a legal writer, but he fails to explain how this is hindering his ability to access to the courts or his ability to pursue a civil rights action. Moreover, as the magistrate judge noted, Plaintiff has not shown that he is unable to file grievances, as he has filed grievances while he has been confined in prison. In short, Plaintiff simply has not shown that the MDOC's procedures and policies have denied him the ability to access the courts. Therefore,

**IT IS HEREBY ORDERED** that the Magistrate Judge's Report and Recommendation issued February 8, 2008 (docket no. 55) is **APPROVED AND ADOPTED** as the Opinion of this Court.

**IT IS FURTHER ORDERED** that Defendant's Motion to Dismiss (treated as a motion for summary judgment) (docket no. 16) is **GRANTED**.

**IT IS FURTHER ORDERED** that Plaintiff's pending motion for discovery and motion for a hearing (docket nos. 44, 47) are **DENIED AS MOOT**.

**IT IS FURTHER ORDERED** that Plaintiff's complaint is **dismissed with prejudice**.

Dated: March 26, 2008

/s/ Gordon J. Quist  
GORDON J. QUIST  
UNITED STATES DISTRICT JUDGE